

MICHAEL E. ACEVEDO,)
)
 Plaintiff,)
)
 v.) No. 4:10CV348 CEJ
)
 DEPARTMENT OF VETERANS)
 AFFAIRS, et al.,)
)
 Defendants.)

This matter is before the Court on plaintiff's motion to file an amended complaint. The Court has reviewed the amended complaint and finds that it suffers from the same defects as the original complaint, i.e., it fails to state a constitutional violation.

Additionally, to bring an action in federal court against the Department of Veterans Affairs or its doctors under the Federal Torts Claims Act, 28 U.S.C. § 1346, a plaintiff must first present his or her claim to the appropriate federal agency pursuant to 28 U.S.C. § 2675(a). Non-compliance with § 2675(a) operates as a jurisdictional bar to proceeding in federal court. McCoy v. United States, 264 F.3d 792, 795 (8th Cir. 2001) (“A litigant may not base any part of his tort action against the United States on claims that were not first presented to the proper administrative agency.”). There

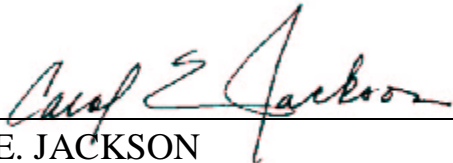
are no allegations that plaintiff has presented this claim to the appropriate federal agency. As such, plaintiff has also failed to state a claim under the FTCA.

Because plaintiff's amended complaint is subject to dismissal, the Court will deny plaintiff's motion.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for leave to file an amended complaint [#7] is **DENIED**.

Dated this 6th day of April, 2010.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE